IN THE HIGH COURT OF PUNJAB & HARYANA CHANDIGARH

Criminal Appeal No.81-SB OF 1996
Date of Decision: JULY 20, 2007

KAMAL NAIN

.....APPELLANT

VERSUS

STATE OF PUNJAB

.....RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

Present: Mr.Bipan Ghai, Advocate for the appellant.
Mr. Anter Singh Brar,DAG Punjab.

A.N.JINDAL, J

The accused appellant(hereinafter referred to as the 'accused') was convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 for keeping in his possession 1 KG of opium without any licence or permit on 29.12.1993 in the area of village Lakhewali and was sentenced to undergo RI for 10 years and to pay fine of Rs.1,00,000/-.

On 29.12.1993 S.I.Darshan Singh along with police party was going on Govt. Canter No.PB04-B-9694 from village Lakhewali to village Gandhar. When they were near the canal bridge in the area of Lakhewali, they apprehended the accused and recovered 1 KG of opium. After drawing sample of 10 grams of opium, the remaining bulk of opium

as well as the sample was converted into two parcels. FIR No.159 of 29.12.1993 was registered against the accused. SI Darshan Singh handled the investigation; recorded the statements of the witnesses; sent ruqa to the police station; prepared rough site plan and the recovery memo and on receipt of the report of the Chemical Examiner challan was presented against him. The accused denied the charge framed against him.

During trial, prosecution examined Sh.Harjinder Singh, M.H.C.(PW1), Sh.Yashpal Constable (PW2), Sh. Ashok Kumar H.C(PW3), Sh. Darshan Singh, SI (PW4) and Sh. Gurdarshan Singh Inspector(PW5). While giving up remaining witnesses he tendered the report of Chemical Examiner, Ex. PK and closed the prosecution evidence. The accused denied all the incriminating circumstances in his statement under Section 313 Cr.P.C., however, no evidence was led in defence. The trial ended in conviction and hence this appeal.

At the very outset, the counsel for the appellant has not assailed the conviction but urged that since the accused is an young man of 23 years; first offender; the sole bread winner of his family and has already undergone 5 years and 4 months of the sentence,therefore, some leniency may be extended to him.

Having deliberated over the aforesaid contentions it transpires that the accused was in his 20s at the time of offence and he has already undergone 5 years and

4 months, therefore, there are chances of his returning to the mainstream. If he is sent again to the prison then he may turn out to be hardened criminal by mixing up with such others. The recovery affected from the appellant is non commercial. No previous antecedents of the accused have been pointed out by Mr. Anter Singh Brar,Deputy Advocate General, Punjab so as to deny some indulgence.

Consequently, this appeal is dismissed with the modification that the sentence awarded against the accused is modified to 5 years and 4 months and the fine awarded is reduced to 10,000/-. In default of payment of fine he would further undergo RI for 3 months.

(A.N.JINDAL)
JUDGE

July 20,2007
Ruchika